



DEMOCRATIC POLICY COMMITTEE **FACT SHEET**

S-31-Health

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July 1, 1999

Democrats Offer a *Real Patients' Bill of Rights*

Today, nearly 161 million Americans obtain health coverage through some form of managed care. These Americans face continuous barriers from a system that too often is more interested in lowering costs and increasing profits than in providing quality health care. The problems and fears faced by these individuals have only increased during the time that Republicans have delayed action on the *Patients' Bill of Rights*.

Congress should pass a real *Patients' Bill of Rights*. The Republican bill is a far cry from meaningful reform. Among other gaps, the Republican bill still leaves medical decisions in the hands of insurance company accountants and provides no effective mechanism to hold plans accountable when plan decisions kill or injure patients. Further, almost two-thirds of privately insured Americans—100 million people—are not covered by the Republican plan.

This document outlines the key areas of difference between **S. 6**, the Democratic *Patients' Bill of Rights*, and the Republican alternative. There are four key areas of difference.

- **Scope of Coverage**
- **Access to Care**
- **Protection of the Doctor/Patient Relationship**
- **Accountability**

Each is discussed in the following pages.

Democratic Policy Committee
United States Senate
Washington, D.C. 20510-7050

Tom Daschle, Chairman
Byron Dorgan, Co-Chairman

Scope of Coverage

All Americans deserve protection regardless of where they live or where they work.

Democratic *Patients' Bill of Rights*

- ✓ Covers 161 million Americans, all Americans with private insurance.

Republican Bill

- X Covers only 48 million Americans... only those in self-funded plans.
- X Leaves out over 113 million Americans, including state and local employees, individuals who purchase insurance themselves without their employer's help, and individuals who work for smaller employers who provide benefits through insurance.

Access to Care

Managed care patients should not face obstacles as they seek access to doctors and needed health care services. Barriers faced by patients today range from managed care companies' refusal to pay for emergency room services without prior authorization to restricting patients' access to specialists.

Emergency Care

Democratic Patients' Bill of Rights

- ✓ Ensures access to closest emergency room—without prior authorization and without higher costs.
- ✓ Ensures treatment and payment associated with emergency (post-stabilization).
- ✓ Consistent with protections for Medicare.
- ✓ Supported by ER doctors.

Republican Bill

- ✗ Covers only those who work for large employers.
- ✗ Doesn't guarantee access to closest emergency room without financial penalty.
- ✗ No requirements for post-stabilization care.
- ✗ Weaker protections than Medicare.
- ✗ Not supported by ER doctors.

Specialists

Democratic *Patients' Bill of Rights*

- ✓ Ensures access to *qualified* specialists.
 - ✓ Outside network, if needed, without financial penalty.
 - ✓ Includes pediatric specialists.
- ✓ Patients with life-threatening/disabling condition can use specialist to coordinate care.

Republican Bill

- ✗ Covers only those who work for large employers.
- ✗ Weak “guarantee.”
 - ✗ no guaranteed access outside network at no extra charge if HMO list inadequate.
 - ✗ no guarantee children can see pediatric specialists.
- ✗ No guarantee patients with life-threatening conditions can use specialist to coordinate care.

OB/GYN as Primary Care Provider

Democratic *Patients' Bill of Rights*

- ✓ Guarantees women can designate OB/GYN as primary care provider.
- ✓ Guarantees women can go directly to OB/GYN if they designate other doctor for primary care.

Republican Bill

- ✗ *No guarantee* women can designate OB/GYN as primary care provider.
- ✗ Only guarantees women working for large employers can go to OB/GYN without getting permission from primary care doctor.

Access to Needed Drugs and Clinical Trials

Democratic Patients' Bill of Rights

- ✓ Ensures access to drugs off an HMO's list when medically indicated without financial penalty.
- ✓ Prevents HMOs from classifying FDA-approved drugs as experimental.
- ✓ Ensures access to quality clinical trials (promising experimental treatments) for those with no other hope.

Republican Bill

- ✗ For those who work for large employers, HMO could charge more for needed drugs off HMO list (bill report language).
- ✗ Does not prevent HMOs from denying coverage of FDA-approved drugs on grounds they are experimental.
- ✗ No guaranteed access to clinical trials and instead requires a "study" on clinical trial participation.

Patient Choice/Adequacy of Network

Democratic Patients' Bill of Rights

- ✓ Makes patient choice a priority for all patients.
- ✓ Allows workers to elect a point-of-service plan if employer offers only closed-panel HMOs.
- ✓ Ensures HMO network can provide promised benefits and services.

Republican Bill

- ✗ Applies to only self-funded plans (one in every three privately insured Americans).
- ✗ Leaves out businesses with fewer than 50 employees, those with least choices.
- ✗ Allows choice requirement to be satisfied with two closed-panel HMOs.
- ✗ Provides no guarantee HMO can provide services promised.

Protection of Doctor/Patient Relationship

A rapidly changing health care system and the dominance of managed care are undermining the doctor-patient relationship. Some managed care organizations use a variety of tools either to restrain doctors from communicating freely with their patients or to provide them with incentives to limit care. Freeing doctors to practice medicine is at the heart of the Democratic *Patients' Bill of Rights*.

Prohibition on Arbitrary Interference By Insurer

Democratic *Patients' Bill of Rights*

- ✓ Prevents *inappropriate* interference with doctor/patient decision-making, including drive-through mastectomies.
- ✓ Establishes independent definition of medical necessity, providing fair standard for external review.

Republican Bill

- ✗ No comparable protection from interference.
- ✗ HMOs define “medical necessity”—allows insurers to overrule doctors’ medical decisions and severely weakens review.

Continuity of Care

Democratic *Patients' Bill of Rights*

- ✓ Provides 90 days continued treatment for patients undergoing treatment (e.g., chemotherapy, cardiac rehabilitation).
- ✓ Provides greater than 90 days for pregnancy, terminal illness, or during a course of treatment in an institution.

Republican Bill

- X Covers only those who work for large employers.
- X Leaves out most people undergoing treatment—only provides coverage for pregnancy, terminal illness, or stay in institution.
- X Limits to 90 days continued care for terminal illness or during a course of treatment in an institution.

Prohibition on Gag Clauses/Financial Incentives

Democratic *Patients' Bill of Rights*

- ✓ Prohibits HMO gag clauses on physicians and other restrictions on medical communications.
- ✓ Medical communications includes discussion of: patient's condition, all treatment options, HMO's utilization review techniques, HMO's financial incentives to limit care.
- ✓ Backs up gag rule protection by prohibiting provider termination without justification.
- ✓ Protects from retaliation providers who advocate for their patients.
- ✓ Limits financial incentives to withhold care.

Republican Bill

- X Covers only those who work for large employers.
- X Applies only to a patient's condition and treatment option, not to communication about financial incentives and utilization review techniques.
- X Allows HMOs to continue terminating providers without cause, *severely weakening an already weak protection.*
- X Provides no protection for providers who advocate for their patients.
- X Provides no limits on financial incentives.

Accountability

Today, insurers make decisions about patients' health care with almost no accountability. Too often, they have the final word and patients are denied needed care. When health plans deny care, patients deserve the right to a timely appeal and to hold their health plan accountable. They deserve reliable, up-to-date information on the quality of their HMO and the benefits it covers and excludes—before a problem arises. Patients deserve a place to turn for assistance as they choose their plan or face a problem with it.

External Appeals

Democratic *Patients' Bill of Rights*

- ✓ Creates a fair, independent, timely appeals process for plan decisions to deny care.
- ✓ Requires a “de novo” review—a fresh look at the facts.
- ✓ Ensures that the HMO cannot delay the review.
- ✓ Requires all rights granted by the bill to be eligible for review (e.g. access to specialist, emergency room, etc.).
- ✓ Includes a fair, neutral standard of “medical necessity.”
- ✓ Ensures an unbiased, external review process.

Republican Bill

- ✗ Creates a biased, flawed process unlikely to resolve patients' needs.
- ✗ Includes no “de novo” review.
- ✗ Allows HMOs to delay reviews indefinitely—time clock begins *after* HMO submits information.
- ✗ Provides no appeal for violations of the bill's limited rights (access to specialists, emergency room, etc.)—covers only questions of whether treatment is medically necessary or experimental.
- ✗ Allows health plans to write their own definition of “medical necessity,” tying hands of reviewers and stacking the deck against patients.
- ✗ Allows the HMO to choose and pay their review entity with no check on bias.

Liability

Democratic *Patients' Bill of Rights*

- ✓ Holds HMOs accountable when their decisions lead to injury or death.
- ✓ Leaves remedies up to States.
- ✓ Protects employers against liability.

Republican Bill

- ✗ Maintains protection for HMOs that injure or kill patients (ERISA loophole).

Information

Democratic *Patients' Bill of Rights*

- ✓ Requires HMOs to provide specified information to its members:
 - ✓ timely notification of changes or reductions in coverage.
 - ✓ up-front disclosure of specific coverage exclusions.
 - ✓ information on specified quality measures (immunizations, satisfaction, etc.) to promote informed decision-making.
 - ✓ specific information on how plan serves children.

Republican Bill

- ✗ Leaves almost 40 million people without guaranteed access to information—including those in the individual market who need it most:
 - ✗ no timely notification of changes or reductions in coverage.
 - ✗ *specific* coverage exclusions *only upon request*.
 - ✗ no information on quality measures to inform families' choices.
 - ✗ no information on how plan serves children.

Ombudsman Program

Democratic *Patients' Bill of Rights*

- ✓ Establishes State-level assistance, to help patients choose plans and resolve conflicts.

Republican Bill

- ✗ Includes no comparable provision.